

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUBEN DARIO GARCIA, Jr.,

CASE NO. 14cv875-LAB (BGS)

VS

Plaintiff:

R. BLAHNIK, et al.

ORDER ADOPTING, IN PART, AND MODIFYING, IN PART, REPORT AND RECOMMENDATION GRANTING SUMMARY JUDGMENT

Defendants.

Ruben Garcia has filed five retaliation lawsuits and over 100 prison appeals in his seven years at R.J. Donovan Correctional Facility. This action is among the latest. Garcia's claims involve a librarian refusing to move a photocopier; a guard refusing to process a grievance as confidential correspondence; and an officer refusing to stop a nurse from touching Garcia's I.D. When these defendants failed to comply with Garcia's demands, he filed grievances accusing them of breaking prison regulations. The defendants made records disputing his grievances as false, abusive, and improper. Garcia then filed this lawsuit against defendants for retaliating against him for filing grievances.

The prison grievance process was designed to check officials from suppressing a prisoner's exercise of Constitutional rights. But retaliation claims "are prone to abuse since prisoners can claim retaliation for every decision they dislike." *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996). That abuse is particularly insidious when inmates repurpose retaliation law to threaten the brave men and women tasked with the difficult job of guarding them. That's the case here.

1

Summary

2 Garcia is serving a life sentence for murdering his girlfriend. Three years ago, he sued
 3 twelve prison officials for retaliation. The magistrate judge recommended granting summary
 4 judgment as to all of the defendants except one. Garcia filed several objections to the Report
 5 and Recommendation. The Court adopts the R&R for the most part, but modifies it to grant
 6 summary judgment as to all defendants.

7

Legal Standards

8 “[A] corrections officer may not retaliate against a prisoner for exercising his First
 9 Amendment right to report staff misconduct,” but courts must also “defer to reasonable
 10 decisions of prison officials.” *Shepard v. Quillen*, 840 F.3d 686, 688 (9th Cir. 2016). “When
 11 a prisoner claims retaliation, we strike this balance by requiring” the prisoner “to show that
 12 a state actor took some adverse action because of the prisoner’s protected conduct.” *Id.*
 13 (alterations omitted). The prisoner must also show that “the action did not reasonably
 14 advance a legitimate correctional goal.” *Id.* Summary judgment is appropriate if the moving
 15 party shows there’s no genuine dispute as to a material fact essential to the claim or claims.
 16 Fed. R. Civ. P. 56.

17

Analysis**A. The Court modifies the R&R to grant summary judgment for Officer Cariman.**

19 The Supreme Court has warned that when prisoners sue correction officials, the lower
 20 courts must “afford appropriate deference and flexibility to state officials trying to manage a
 21 volatile environment.” *Sandin v. Conner*, 515 U.S. 472, 482 (1995). The Ninth Circuit has
 22 acknowledged that in *Sandin*, the high court “specifically expressed its disapproval of
 23 excessive judicial involvement in day-to-day prison management, which often squanders
 24 judicial resources with little offsetting benefit to anyone.” *Pratt v. Rowland*, 65 F.3d 802, 807
 25 (9th Cir. 1995) (alterations omitted). In particular, our circuit has emphasized that deference
 26 should be given “to prison officials in the evaluation of proffered legitimate penological
 27 reasons for conduct alleged to be retaliatory.” *Id.* That sensible guidance applies here.

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1 The R&R recommended granting summary judgment as to all but one defendant:
 2 Officer Cariman. Garcia's retaliation claim against Cariman is based on two encounters.

3 The first happened in July 2013 while Cariman was supervising inmates receiving
 4 medication. Cariman says Garcia accused the duty nurse of contaminating Garcia's medicine
 5 by handling other inmates' identification cards. The nurse told Garcia to take his medication
 6 or leave. Garcia refused to provide his card or take his medication. Garcia demanded that
 7 Cariman take action. But Cariman told Garcia the same thing as the nurse: take the medicine
 8 or forfeit treatment and leave. Garcia returned to his cell and composed a Form 22.¹

9 Garcia's Form 22 confirms Cariman's version of events:

10 "Cariman . . . while you were conducting your Post Assignment duties . . . as med-
 11 line Security personnel, I reported to you how the on-duty (LVN) was endangering I/M
 12 health and safety . . . through cross contamination . . . [by] taking physical possession
 13 of [inmate] I.D.s or demanding them to place such on the counter . . . In response
 14 you demanded I comply or I would forfeit treatment . . . Because of such, I am
 15 requesting to be provided cause or a legitimate penological interest for your failure
 16 to ensure inmate safety." (Errors in original.)²

17 The second encounter happened two weeks after Garcia filed this Form 22. Garcia
 18 was getting his medication and repeated the same drill: Garcia argued with the dispensing
 19 nurse about identification, medication, and contamination. Cariman stepped-in and Garcia
 20 argued with him. Specifically, Garcia said, "You are retaliating, because I wrote you up last
 21 week." Cariman says Garcia was noncompliant and disrupting the pill line—he told Garcia
 22 to "cuff up" and put him in a holding cell. Then Cariman wrote a Rules Violation Report
 23 documenting Garcia's interference. The RVR tells the same basic story as Cariman's
 24 declaration.³

25 Garcia's opposition picks out various facts in Cariman's account and says they didn't
 26 happen. For example, Cariman says that Garcia caused a disruption of about 10 to 15
 27 minutes—Garcia says it was 10 to 15 seconds. Cariman says he approached Garcia at the

28 ¹ Dkt. 63-8 (Cariman Declaration). The Form 22 is a means for prisoners to ask to
 29 speak with a staff member. 15 CCR § 3086.

29 ² The opposition echoes Cariman's version as well. Note that Garcia's grievance is
 30 structured to lay the groundwork for his retaliation claim: "I am requesting to be provided . . . a legitimate penological interest for your failure to ensure inmate safety" Dkt. 63-3 at 100.

30 ³ Dkt. 63-8.

1 window. Garcia says it wasn't at the window. Cariman says Garcia called him a "mama
2 pinga." Garcia says he's never heard that expression.

3 The R&R recommended against granting summary judgment for Cariman because
4 the magistrate judge perceived that there were too many conflicting facts surrounding the
5 encounter between Garcia and Cariman in the pill line. As an example, the magistrate judge
6 pointed out that there was a dispute whether Garcia took his medication or showed his
7 identification to Cariman. The Court acknowledges these minor discrepancies but concludes,
8 contrary to the magistrate judge, that the discrepancies don't concern materials issues.⁴

9 One of the discrepancies does require specific discussion: Garcia says he told
10 Cariman that he filed a grievance against him and Cariman replied: "Oh yeah! . . . you wrote
11 me up! . . . then turn around and cuff-up!" But regardless of who's telling the truth—and
12 crediting Garcia's account as the Court must under the summary judgment standard—there
13 are two reasons that quote doesn't get Garcia to a jury.

14 First, Cariman *agrees* that Garcia told him, "You are retaliating because I wrote you
15 up last week," *and*, that Cariman told Garcia "to cuff up." Garcia hasn't created a material
16 dispute by merely adding some selective dialogue, or by using ellipses to leave out part of
17 the conversation, and then asking the Court to speculate that Cariman cuffed Garcia *because*
18 Garcia said he filed the Form 22.⁵ *Nelson v. Pima Cnty. Coll.*, 83 F.3d 1075, 1081 (9th Cir.
19 1996) (claim that plaintiff "did one thing, and subsequently the other thing happened" didn't
20 raise a "material fact in order to preclude summary judgment").

21 Second, Cariman says he told Garcia to cuff up for good reason: Cariman had just
22 gone through the same scenario with Garcia two weeks earlier. Cariman says he knew

23 ⁴ Garcia says he never told Cariman "no body touches my i.d." and that's "supported
24 by the fact that" he's never been disciplined for failing to turn in his identification cards. (Dkt.
25 80 at 49.) But that's belied by Garcia's Form 22, filed two weeks before this second incident,
26 that raises these exact issues. And whether Cariman accurately recorded Garcia's statement
27 isn't material: Garcia admits that on this second occasion, the nurse asked him, "you don't
like people touching your i.d.?"; and in response, Garcia launched into his concern that the
nurses were threatening his safety. That corroborates the important fact in Cariman's
story—namely, Garcia was once again making an issue about his contamination concern.

28 ⁵ The Court concludes that Garcia's use of ellipses with reference to this quote was
intentional: he used them both in his opposition and in his declaration. Dkt. 80 at 19, 48.

1 Garcia wasn't taking his medications regularly, and that he was concerned the situation could
2 escalate and turn volatile. Cariman made the decision to nip the problem in the bud, put
3 Garcia in cuffs, and set him aside in a temporary holding cell so he could "preserv[e]
4 institutional order and discipline." *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994).

5 Cariman also proffered unrebuted evidence that monitoring the pill line is particularly
6 important because there is an ongoing problem with inmates finding ways to stash medicine,
7 stock it up, and then combine it with other substances to create more powerful drugs.
8 Garcia's decision to confront the nurse and Cariman about supposed contamination, with a
9 crowded line of inmates waiting for medication, "disrupted orderly operations." CCR § 3004.
10 Garcia hasn't shown that Cariman's actions were "arbitrary" "to the maintenance of order in
11 the institution." *Watison v. Carter*, 668 F.3d 1108, 1115 (9th Cir. 2012) (alterations
12 omitted). To the contrary, it is Cariman who has raised legitimate correctional goals that
13 Garcia hasn't addressed. *Barnett*, 31 F.3d at 816 (9th Cir. 1994) ("prison discipline" is a
14 "legitimate penological purpose").

15 Cariman's "day-to-day" decision to remove Garcia from the pill line is the type of call
16 *Sandin* says courts need to avoid second guessing. Instead, the Court should "afford
17 appropriate deference and flexibility to state officials trying to manage a volatile environment."
18 *Sandin*, 515 U.S. at 482. Impaneling a jury to resolve this kind of triviality would be a futile
19 exercise that "squanders judicial resources with little offsetting benefit to anyone." *Pratt*, 65
20 F.3d at 807 (9th Cir. 1995).

21 **B. The Court overrules Garcia's objections to the R&R.**

22 The Court reviews Garcia's objections de novo but otherwise accepts the accuracy
23 of conclusions in the R&R. *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Garcia objects to the
24 R&R granting summary judgment against four defendants and for failing to grant a
25 continuance. The Court addresses each objection below, but agrees with the remainder of
26 the R&R.

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1 **1. Blahnik**

2 Garcia objects to the R&R granting summary judgment to librarian Blahnik. A few
 3 summers ago, Garcia filed two Form 22s informing Blahnik that he needed more library time
 4 and copies free of charge. After filing the Form-22s, two library incidents occurred: (i) Garcia
 5 demanded that Blahnik move the photocopy machine to the front of the library so he could
 6 monitor Blahnik making copies of Garcia's confidential legal documents; and (ii) Garcia failed
 7 to show up for his scheduled library time. Blahnik filed 128-Bs to document both events.⁶

8 Garcia objects that the 128-Bs amounted to adverse actions because they contained
 9 threats. He says it doesn't matter that the threat was made in the context of the 128-B. He
 10 contends that a threat is a threat, regardless of the medium. He relies on *Brodheim v. Cry*,
 11 584 F.3d 1262 (9th Cir. 2009). In *Brodheim*, after a prisoner filed grievances, the Prison
 12 Appeals Coordinator wrote back, "I'd also like to warn you to be careful what you write . . .
 13 on this form" and then requested that the prisoner "be transferred out of the CMF due to his
 14 filing of grievances and this lawsuit." *Id.* at 1264. The Ninth Circuit reversed summary
 15 judgment because it found the district court overlooked that "the mere threat of harm can be
 16 an adverse action." *Id.* at 1270.

17 What happened in *Brodeim* is quite different from what happened here. Blahnik's 128-
 18 Bs weren't adverse actions or threats. As the librarian, Blahnik has every right to record
 19 Garcia's failure to follow library rules, and, to put Garcia on notice that continuing to interfere
 20 with the functioning of the library has consequences.⁷ See CCR §§ 3005, 3122.

21 Even were the Court to construe Blahnik's statements as threats, Garcia hasn't put
 22 forward evidence that his Form-22s were "the substantial or motivating factor" that caused
 23 Blahnik to file the 128-Bs. *Brodheim* at 1271. Garcia, instead, argues that the 128-Bs
 24 threatened him because of his "repeated request to be provided duplication services in a

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 27 ⁶ The Form 128-B is defined as a general chronology "which is used to document
 28 information about inmates and inmate behavior." Unlike the 128, the RVR (Rules Violation
 Report), or Form 115, documents disciplinary infractions. CCR § 3000.

⁷ Dkt. 63-10 (Blahnik Declaration).

1 manner that did not violate his right to confidential correspondence."⁸ Demanding the librarian
2 move a photocopier to the front of the library isn't protected speech.

3 Blahnik later filed an RVR after Garcia *again* demanded movement of the photocopier.
4 Garcia hasn't raised a material dispute that the RVR was filed for an illegitimate purpose.
5 Blahnik explained that inmates aren't allowed near the copying machine because they
6 contain "metal parts that could be used as weapons."⁹ And Garcia again disrupted Blahnik's
7 administration of the library by demanding that Blahnik personally make copies and then
8 arguing that Blahnik needed to move the photocopier to the front of the library.

9 Garcia objects that the RVR discusses previous grievances and states that Garcia
10 threatened litigation. He says that's sufficient evidence that Blahnik didn't have a legitimate
11 correctional purpose, but was instead, targeting him for filing past grievances.

12 The Court disagrees. The two relevant sentences Garcia mentions simply state:
13 “[Garcia] has written previous frivolous 602’s pertaining to this same issue since August
14 2012. He further threatened litigation.” Blahnik reported the previous grievances in the
15 context of Garcia’s continued demand that he move the photocopier—in other words, Garcia
16 can’t manufacture a case by threatening Blahnik with a lawsuit, then filing a lawsuit based
17 on Blahnik’s report that Garcia threatened a lawsuit.¹⁰

2. Flores

19 Garcia objects to the R&R granting summary judgment to Officer Flores. Flores was
20 working overtime one evening when Garcia approached him and demanded that he process
21 another inmate's appeal as confidential correspondence. Flores refused because prison
22 appeals aren't processed as confidential. Garica responded that he would "go to every
23 building on the yard and have every inmate try to process all appeals as confidential
24 correspondence every time [Flores] was working as a floor officer in their building." And

⁸ Dkt. 80 at 8.

⁹ Dkt. 63-10.

¹⁰ Dkt. 63-10. Garcia also objects to summary judgment for Blahnik's supervisor, Mendoza, because he signed the RVR Blahnik filed. Because the Court rejects Garcia's argument that Blahnik violated his rights, it likewise rejects his objection that Blahnik's supervisor is guilty of conspiring with him to violate Garcia's rights.

1 Garcia “threatened to orchestrate mass lawsuits” against Flores for his refusal. Flores filed
 2 an RVR reporting Garcia’s threats.¹¹

3 Garcia doesn’t dispute this account. Instead, he argues that inmates have a right to
 4 have prison appeals treated as confidential correspondence when they contain confidential
 5 information. He admits that he told Flores he “was going to write and file grievances
 6 jointly/together with other inmates.” Flores asked if Garcia was going to “conspire to file
 7 grievances” against him—Garcia says he responded “yes it was exactly what I and other
 8 inmates will do.”¹²

9 Garcia is missing the point here: it’s not whether he *has the right* to file appeals as
 10 confidential correspondence—it’s that he *doesn’t have the right* to threaten a prison guard
 11 who disagrees with his interpretation of regulations. As Garcia’s objections note, there’s a
 12 procedure for prisoners to bring issues to the prison’s attention through a group appeal where
 13 the prisoners submit “one CDCR Form 602.” CCR § 3084.2 (emphasis added). Threatening
 14 to have “every inmate” conspire to harass Flores by filing the appeals and “mass lawsuits”
 15 isn’t protected conduct.

16 The R&R supplied three different reasons for summary judgment, Garcia objected to
 17 two, and the Court need only address one: Flores had a legitimate penological purpose in
 18 reporting Garcia’s threats that he would abuse the appeals process unless Flores did what
 19 he wanted. CCR § 3013 (“Inmates shall not attempt to gain special consideration” through
 20 “threat or other unlawful means.”); see § 3084.4 (appeals process abuse).

21 **3. Estes**

22 Garcia objects to the R&R granting summary judgment for Officer Estes. Garcia says
 23 he filed a Form 22 alleging that Estes wasn’t forwarding Garcia’s Form 22s. Estes
 24 documented this encounter by filing a 128-B (general chronology). Estes’ write-up repeats
 25 allegations contained in Garcia’s Form 22; namely, that Garcia says the staff is conspiring
 26 against him. Estes reported that Garcia’s allegation was false (he was forwarding the Form

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 28 ¹¹ Dkt. 63-14.

¹² Dkt. 80 at 54.

1 22s), that Garcia had filed an "excessive number" of Form 22s, and that he was "utilizing the
 2 CDCR Form 22 process in an abusive manner."¹³

3 Garcia objects that Estes' 128-B was an adverse action because it amounted to
 4 threatening him under *Brodheim v. Cry*, 584 F.3d 1262 (9th Cir. 2009). The reasoning here
 5 tracks the problems with Garcia's claims against Blahnik: When a prisoner makes a false
 6 accusation against a guard, the guard has every right to make a record of the alleged falsity
 7 of the accusation in a 128-B without fear of a lawsuit. Estes recorded the facts as he
 8 perceived them and reported his observations of Garcia's conduct; nothing in such a
 9 recounting amounts to a threat like the one in *Brodheim*.

10 Even if the Court were to conclude that Garcia had raised a genuine issue that Estes'
 11 128-B amounted to a threat of retaliation, Garcia hasn't put forward evidence that Estes filed
 12 the 128-B for an improper correctional purpose. Instead, Estes' declaration explained that,
 13 among other things, he was reporting a basic violation of prison regulations because Garcia
 14 filed Form 22s more often than the fourteen days allowed. CCR § 3084.4.

15 **4. Continuance**

16 Garcia says he's entitled to more time to brief his opposition. But Garcia filed this
 17 action three years ago and defendants filed their summary judgment motion more than six
 18 months ago. The magistrate judge went out of his way to accommodate Garcia: He granted
 19 multiple extensions and facilitated calls to ensure Garcia had the legal materials he needed
 20 to oppose summary judgment. Though Garcia's objections came in ten days after the
 21 deadline, the Court accepted them anyway.

22 Garcia also objects that the R&R erred by ignoring his medical impairments. Not so.
 23 The Court doesn't dispute that Garcia's receiving mental health treatment. Nor does the
 24 Court overlook the fact that the jailhouse lawyer program is assisting Garcia. The Court
 25 agrees with the magistrate judge that Garcia has effectively litigated the case.

26 Garcia also objects to the refusal to grant an additional continuance on the ground that
 27 he needs time to gain access to additional legal materials. He says the R&R improperly relied
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¹³ Dkt. 63-9.

1 on non-party declarations from prison staff stating that Garcia refused to take his property
2 on multiple occasions. But the magistrate judge addressed these concerns in November: he
3 ordered the Defendants to print-out and provide the briefing documents to Garcia. The judge
4 also ordered Garcia to indicate in his opposition any specific documents he needed but didn't
5 have to oppose summary judgment.¹⁴ Garcia didn't do that. Instead, he signed-off his brief
6 by accusing the court of forcing him to respond "while suffering from serious mental
7 illness/crisis" which denies "him a fair hearing and [is] tantamount to an abuse of discretion."¹⁵

The Court understands Garcia's situation, but finds that his concerns have been thoroughly and repeatedly accommodated. And it's also worth point out that Garcia's concerns aren't the only ones that count: Defendants have had Garcia's lawsuit hanging over their heads for three years. The Court must also Garcia's propensity to repeatedly ask for indefinite extensions with the responsibility of managing a busy docket. After receiving numerous prior extensions, Garcia's not entitled to more time.

Conclusion

15 Garcia says he's concerned about how medical staff handle identifications cards, how
16 photocopying is done, and how confidential information is protected. It may be more
17 productive if he advocates for the policy changes he wants within the prison, rather than filing
18 lawsuits. The Court adopts the Report and Recommendation but modifies it to grant
19 summary judgment in favor of all defendants.

20 || IT IS SO ORDERED.

21 DATED: 3/29/2017

Larry A. Bunner

HONORABLE LARRY ALAN BURNS
United States District Judge

14 Dkt. 76, 78.

15 Dkt. 80 at 21.